IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1354 OF 2006

Ashok Madhav Phadnis ... Petitioner

Vs.

Walchandnagar Sahakari Bank Ltd. & Anr. ... Respondents

Mr. Uday Warunjikar for the petitioner.

CORAM : SMT. RANJANA DESAI, J.

DATED : 9TH NOVEMBER, 2006.

P.C. :-

1. In this petition, the petitioner has prayed that the order dated 16/6/2006 passed by the Additional Sessions Judge, Baramati (below Ex-31) in Criminal Appeal No.17 of 2001 be quashed and set aside.

2. The petitioner has been convicted for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for one year and to pay compensation of Rs.20,00,000/- to the complainant in Summary Criminal Case No.1010 of 1998.

3. The petitioner preferred Criminal Appeal No.17 of 2001 in the Court of Additional Sessions Judge, Baramati, challenging the said judgment and order of conviction and sentence. In that appeal, he preferred application (Ex-31) on 13/4/2006 praying that he may be permitted to examine himself on oath in support of his case and witness summons be issued to his brother - Vijay Phadnis, proprietor of Vijay Industries. By the impugned order, the said application was rejected and, hence, this writ petition.

4. In my opinion, this writ petition needs to be dismissed for more than one reason. On 29/9/2006, this writ petition was heard for admission by Justice A.S. Oka. The petitioner filed affidavit in this court stating that he was willing to settle the entire matter. He stated in the affidavit that on 3/10/2006 he shall deposit an amount of Rs.2 lacs in the lower appellate court at Baramati and he undertakes to deposit Rs.10,46,410/- within a period of two weeks from the date of the affidavit in the lower appellate court at Baramati. In the circumstances, Justice Oka, directed the petitioner to deposit Rs.2 lacs in the lower appellate court on 3/10/2006. Paragraph 4 of the said order is material. It reads thus :

> "The Petitioner is directed to deposit a sum of Rs.2,00,000/- in the Appellate Court on 3rd October 2006. The Petitioner will deposit the balance amount of Rs.10,46,410/- with the Appellate Court on or before 13th October, 2006."

5. Thus, the petitioner was to deposit the balance of Rs.10,46,410/- in the lower appellate court on or before 13/10/2006. In the operative part of the order, conditions were mentioned. One of the conditions is that if the petitioner fails to deposit an amount of Rs.2 lacs on or before 3/10/2006, the warrant issued against him will forthwith become executable. Considering the assurance given by the petitioner in his affidavit, the warrant was ordered to be stayed till 16/10/2006. It appears that the petitioner has paid Rs.2 lacs as ordered. However, the balance amount was not paid as promised. Hence, on 16/10/2006, the court extended time to deposit the said amount till 20/10/2006. Till date, the said amount has not been deposited. Thus, the petitioner has committed breach of order dated 29/9/2006 passed by this court. After having filed an affidavit in this court and after having undertaken to deposit the rest of the amount, the petitioner ought to have abide by the said undertaking. In my opinion, on this ground alone, the petition

deserves to be dismissed.

6. Mr. Warunjikar, the learned counsel appearing for the petitioner has also argued that the learned judge has not considered the merits of the petitioner's application. He has merely observed that the sole intention of the petitioner was to prolong the matter and in the circumstances, he has rejected the application without considering the merits. Mr. Warunjikar drew my attention to paragraph 7 of the application where the petitioner has stated that at the time of recording his statement under section 313 of the Criminal Procedure Code (for short, “the Cr.P.C.”), he has replied that the complainant has lodged a false complaint. However, now the petitioner has realized that the petitioner should have stepped into the witness box and examined himself as well as other witnesses and, therefore, for finding out the truth and in the interest of justice, the application for additional evidence is filed under section 391 of the Cr.P.C. Mr. Warunjikar submitted that the learned judge ought to have applied his mind to the averments made in the petition.

7. In my opinion, the impugned order suffers from no infirmity. The observations of the learned judge that the petitioner's application is aimed at prolonging the matter cannot be faulted. It is pertinent to note

that earlier the petitioner had made two applications praying that he may be permitted to lead additional evidence. The first application is at Ex-18, which was rejected by the trial court. It was carried upto this court and this court rejected the challenge. Another application was filed, which is at Ex-23. That was also rejected by the court. On 4/4/2006, the writ petition filed by the petitioner has also been withdrawn by the petitioner. I am informed that pursuant to the order passed by this court, the present petition is filed. The fact remains that two attempts to persuade the lower appellate court and this court to permit the petitioner to lead additional evidence have failed and, thereafter, the present petition came to be filed for the same relief. The learned Sessions Judge has rightly observed that the application of the petitioner is filed after five and half years and the intention of the petitioner to protract the litigation is absolutely clear. I also do not find any substance in the submission of Mr. Warunjikar that the learned judge has not considered the merits of the petitioner's case. The learned judge has traced the history of the matter and found that the application has no merits. It is implicit in this that he has rejected the contentions of the petitioner. In any case, on facts, I am of the opinion that on the merits also the petitioner has no case. The submissions that at the time of recording statement of the petitioner under section 313 of the Cr.P.C. the petitioner merely replied that the complainant has lodged a false case

and now he has realized that he ought to have stepped into the witness box and ought to have examined himself on oath as well as his witnesses are far-fetched. On such grounds, prayer for additional evidence cannot be granted. In the circumstances, I find no merit in the petition. The petition is rejected. Mr. Warunjikar says that the petitioner may be allowed to withdraw the amount deposited by him in the lower appellate court. The petitioner may make proper application if he so desires. Needless to say that on such application being preferred, the court seized of the matter shall deal with it in accordance with law.

[SMT. RANJANA DESAI, J.]